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SEA HOUSING CORPORATION SDN BHD v. PENTADBIR PEJABAT DAERAH DAN TANAH PETALING

HIGH COURT MALAYA, SHAH ALAM
MUNIANDY KANNYAPPAN J
[ORIGINATING SUMMONS NO: BA-24NCvC-157-02-2022]
5 AUGUST 2024

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Abstract – *An order to forfeit a land to the State Authority must be made pursuant to s. 100 of the National Land Code. A land forfeited for a public purpose without following the proper procedures under the Land Acquisition Act 1960, is invalid and contrary to art. 13(1) of the Federal Constitution.*

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LAND LAW: *Forfeiture – Forfeiture order – Setting aside – Discovery of ownership of another plot of land – Information came to light when owner received arrears notice ('notice 6A') – Land office informed owner that plot did not exist and overlapped with another plot of land – Land office informed owner that Notice 6A was incorrect and could be ignored – Later discovery that plot of land did exist – Plot of land forfeited for public purpose due to owner's failure to pay and settle arrears of quit rent – Whether forfeiture valid – Whether provisions of National Land Code complied with – Whether there was contravention of art. 13(1) of Federal Constitution – Land Acquisition Act 1960*

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The plaintiff, a company, was the registered owner of a piece of land ('Lot 3330'). *Circa* 1980s, the plaintiff had worked on six plots of land for a housing development ('Sea Park Apartments'), namely Lots 8373, 8374, 8375, 8377, 8388 and 8399. In 2006, the land on which the Sea Park Apartments were developed was sold by the plaintiff to one Yap. Four different sale and purchase agreements ('SPA') were executed for Lots 8376, 8380, 8381 and 8383, which were the lands surrounding the apartments. In 2016, the plaintiff discovered that it was also the registered owner of another plot of land ('Lot 8914'). The information came to light when the plaintiff received arrears notice ('Notice 6A'). The plaintiff approached the Registrar of Titles at the State of Selangor to obtain a copy of the title to Lot 8914. Further clarification on it was obtained from the defendant *via* its technical division. Upon examination of the drawing to the grant of land at Lot 8914, the technical division of the defendant informed the plaintiff that Lot 8914 did not exist and overlapped with Lot 8383. The verbal notification by the defendant was supported by the report prepared by its assistant officer. It was then decided by the defendant that there had been a mistake in issuing the title to Lot 8914. Subsequently, the plaintiff was informed that Notice 6A was incorrect and could be ignored. As such, the plaintiff ignored the Notice 6A. However, in 2018, Yap informed the plaintiff that Lot 8914 did not

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overlap with any other land but it existed as a separate piece of land located in the Sea Park Apartments area. According to Yap, he was informed that the State Authority, *via* the defendant, had forfeited Lot 8914 due to the plaintiff's failure to pay and settle the arrears of quit rent. In support of his information, Yap supplied the plaintiff with a report prepared and signed by the defendant's assistant officer ('amended report'). The amended report was similar to the report given to the plaintiff and, in fact, showed that Lot 8914 did not overlap with Lot 8383 but instead was adjacent to it. This prompted the plaintiff to submit a petition to the defendant to set aside the order of forfeiture made on Lot 8914. The defendant, however, failed to be responsive and refused to undertake its statutory responsibility. The plaintiff then appealed, at the High Court, against the decision of the defendant. The High Court directed the defendant to rehear the plaintiff's petition. The defendant once again rejected the plaintiff's petition and the plaintiff was informed that the forfeiture of Lot 8914 was maintained as the land was to be utilised for public purpose as a public road. Hence, the originating summons on the grounds that, *inter alia*, (i) Notice 6A for Lot 8914 was invalid, void and contrary to the National Land Code ('NLC'); (ii) the order to forfeit ownership of Lot 8914 was invalid and void; (iii) the defendant's refusal of the petition to annul the forfeiture of Lot 8914 was contrary to s. 133 of the NLC and art. 13 of the FC; and (iii) the reason given for the refusal of the petition and stipulating that the forfeiture was for public purpose and/or interest was wrong in law as such a purpose could only be for purposes of land acquisition under the Land Acquisition Act 1960 ('LAA').

Held (allowing originating summons):

(1) It was clear as crystal that with the non-compliance by the defendant of the mandatory provisions of the NLC, the legal consequence was that the plaintiff had Lot 8914. Through no fault of the plaintiff, it was told at the first instance that they could ignore Notice 6A issued as it was wrongly issued and there was no basis for demand to be made for the arrears of quit rent, simply because there was an intersection of two lots. The information did not come from any third party but the defendant itself *via* its technical division. The argument by the defendant, that it was only proper for the plaintiff to have obtained information from the Unit Hasil and not the technical division, did not hold sway both logically and legally as whatever information received by the plaintiff was from the defendant, regardless of which division it came from, as that would be a matter for the defendant to contend with and it was not the fault of the plaintiff to have relied on the information accorded by the technical division of the defendant. (para 19)

(2) It is a requirement under the NLC that an order declaring the land forfeited to the State Authority must be made pursuant to s. 100 of the NLC. In the present case, however, no such proof or evidence was candidly tendered by the defendant. The right of the plaintiff to its land was trampled by the defendant due to its wanton disregard to the mandatory provisions of the NLC, especially so on the service of Notice 6A and making the order of forfeiture and the service of it accordingly. (para 21)

(3) At the outset, the intention of the defendant was to forfeit Lot 8914 and for it to be used as a road for public purpose. If the sole intention for the forfeiture was for a public purpose, then the mode and manner of dealing shall be under the LAA which entails a separate and distinct set of procedure which would also favour the plaintiff, which included: (i) notification of the land acquisition to the public; (ii) entry and survey of the subject land in issue; (iii) marking of the subject land and notation of the acquisition on the Register; (iv) an enquiry conducted by the Land Administrator; and (v) an award by the Land Administrator and, if necessary, a reference to the High Court upon the making of the award. In this case, the defendant had adopted the wrong mode when it forfeited the land at Lot 8914 for a public purpose. It was also in clear contravention of art. 13(1) of the Federal Constitution. (para 29)

Case(s) referred to:

Lee Kwee Foh Sdn Bhd v. Pentadbir Tanah Daerah Batang Padang [2019] 1 CLJ 141 HC ***(refd)***

Pow Hing & Anor v. Registrar Of Titles, Malacca [1980] CLJU 120; [1980] 1 LNS 120 FC ***(refd)***

Legislation referred to:

Federal Constitution, art. 13(1)

National Land Code, ss. 62(1), 97(1), (2), 98, 99, 100, 130(1), (2), 133(1), (2), 134(1), (2), 418, 432, 433

For the plaintiff - Lim Kien Huat & Bryan Ching Tze Yeow; M/s Lee & Lim
For the defendant - Khairul Nizam Abu Bakar & Nurul Izzah Abdul Mutalib; SFC

Reported by Lina E

JUDGMENT

Muniandy Kannyappan J:

Background Facts

[1] The plaintiff is a company registered with the Companies Commission of Malaysia. It was established in 1946 as SEA Rubber Company Limited. Its name was changed to SEA Housing Corporation in the year 1964. Later in the year 1966, its name was changed to SEA Housing Corporation Sdn Bhd still incorporated in that name.

[2] It is the registered owner of the land with title no. 11376, Lot 3330 Mukim and Kuala Lumpur District which was acquired in the year 1939. Later in the year 1966 it was divided into ten plots of land held under the title Sungai Buloh subdistrict, Petaling District, State of Selangor, with Grant No. 39964 to 39973 and its equipollent Lot No. 22710 to 22718 and 22720. A

[3] *Circa* 1980s, the plaintiff had worked on six of the plots of land for housing development known as Sea Park Apartments consisting of six blocks of four storey apartments. One block apartment on each lot of the land, namely Lot No. 8373 to 8375, 8377 to 8379, referred to as the apartment land for Block A to Block F. Save for the apartment land, about August and September 2006, the land on which Sea Park Apartments were developed was sold by the plaintiff to Yap Say Tee. Four different sale and purchase agreements were executed bearing date 30 September 2006 for Lots No. 8376, 8380, 8381 and 8383, which are in fact the lands surrounding the apartments. B C

[4] Later in May 2016, the plaintiff discovered that it is also the registered owner of a plot of land held under HSD 154296 which is Lot 8914 at Bandar Petaling Jaya, Petaling District, Selangor. It was discovered when the plaintiff received a rent arrears Notice 6A dated 3 March 2016, only then the plaintiff had realised there were arrears of rent due and it had to pay. D

[5] Because of that, the plaintiff had approached the Registrar of Titles at the State of Selangor in order to obtain a copy of the title to Lot 8914. It had received and was certified valid. Further clarification on it was obtained from the defendant *via* its technical division. (See: exh. P7 to the affidavit in support (AIS) to the originating summons (OS) at encl. 1). E

[6] Upon examination of the drawing to the grant of land at Lot 8914, the technical division of the defendant had informed the plaintiff that Lot 8914 does not exist as it overlaps with Lot 8383, which is one of the lands surrounding the apartments. The notification by defendant was not only verbal but supported by the report of the assistant officer to the defendant, one Ridzuan bin Kambali @ Ramli dated 25 July 2014. (See: P8 to the AIS). F G

[7] Thus, it was decided by the technical division of the defendant that there has been a mistake in issuing the title to Lot 8914, and the demand for payment of arrears of quit rent was also a mistake. The plaintiff was duly informed that Notice 6A was incorrect, and it can be ignored by them. The information given is not feeble, but from the defendant which is from a reliable and authoritative source. As such, Notice 6A was ignored by the plaintiff. Rightly so, as aftermath the plaintiff did not receive any other notice from the defendant. H

[8] But to the plaintiff's dismay, Yap Say Tee had informed them that in the month of August 2018, the impugned Lot 8914 does not overlap with any other land but exists as a separate piece of land located in the Sea Park I

A Apartments Area. The other staggering information received from Yap Say Tee was that the State Authority *via* the defendant had forfeited it, simply because of the plaintiff's failure to pay and settle the arrears of quit rent for the said Lot 8914. In support of his information, he had supplied a copy of the report form signed by the same person Ridzuan bin Kambali @ Ramli
B dated 25 July 2014, to the plaintiff. It is referred to as the amended report. (See: P9 to the AIS). Save for the notes and diagram on the said report, the amended report is a similar one to the original report. It in fact shows that the impugned Lot 8914 does not overlap with Lot 8383 but instead Lot 8914 is adjacent to Lot 8383.

C **Contention By The Plaintiff**

[9] It is seriously contended by the plaintiff that failure by them to pay the arrears of quit rent for Lot 8914 is due to an error in the diagram as well as the original report, where it was shown by the defendant that the said Lot 8914 overlaps with Lot 8383.

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[10] In addition to that, the plaintiff had also relied on the statement made by the technical division of the defendant, which was supported by the original report, referring specifically to Lot 8914 being used as a parking lot, which is also a factual representation of Lot 8383.

E **[11]** Moreover, the plaintiff was also under the honest belief based on the statement made by the officer of the technical division of the defendant in respect of cancellation of Notice 6A, because of the overlapping lots, and the plaintiff was positively informed, that it was needless for them to pay the arrears of quit rent demanded. It is stressed by the plaintiff that abandonment
F of Notice 6A is purely based on the representation by the technical division of the defendant, being an authoritative and reliable source for the plaintiff to be beholden to. Furthermore, it was contended by the plaintiff that all the while it has a good record of payment of quit rent for each of the lots of land in the apartments area. If no error was shown in the diagram to Lot 8914
G and the original report shown by the technical division of the defendant, there would not have been a confusion re-overlapping position of the impugned Lot 8914 with Lot 8383 and there would not have been failure on the part of the plaintiff to pay the arrears of quit rent demanded pursuant to Notice 6A dated 3 March 2016. Unfortunately, the plaintiff only came to know of the impugned Lot 8914 when it was forfeited by the State Authority.

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[12] Consequent to the forfeiture, the plaintiff has lost ownership of the impugned land Lot 8914, so goes for its right to occupy and use it as its owner. Because of the same, the plaintiff and Yap Say Tee could not enter the land surrounding the apartments resulting in them being disabled to
I manage the land surrounding the apartments and Lot 8914.

Basis For The Application

[13] In law, the plaintiff claims to have authority to set aside the order of forfeiture made on the impugned Lot 8914 pursuant to s. 133(1) of the National Land Code (NLC) which reads as:

> **Power of State Authority to annul forfeiture, or re-alienate to previous proprietor on new terms, *etc*.**
>
> (1) Any person or body who was the proprietor of any alienated land immediately before its forfeiture under this Act may at any time apply to the State Authority for the annulment of the forfeiture.
>
> (2) The State Authority may in its absolute discretion refuse or allow any petition under this section, …
>
> … (emphasis added)

Thus, a petition was submitted by the plaintiff to the defendant on 4 December 2018. However, the defendant had failed to be responsive and had refused to undertake its statutory responsibility under s. 133(2) of the NLC, hence its letter dated 7 March 2019. For the defendant to have decided such, was contended to be incorrect and it lacks basis under the law. Due to that decision by the defendant, the plaintiff had filed a writ of summons No. BA-24NCVC-722-05-2019 at the Shah Alam High Court in order to appeal against the said decision by the defendant. The High Court had allowed the appeal by plaintiff on 14 May 2020. With that, the letter conveying the decision by the defendant was set aside and the defendant was directed to rehear the petition filed by the plaintiff. After an inordinate delay of 911 days, with no reasons afforded for the delay, the defendant had once again rejected the petition by the plaintiff *vide* letter dated 10 November 2021. It was informed by the defendant that forfeiture of the impugned land Lot 8914 is maintained, and it is to be utilised for public purpose as a public road pursuant to s. 62 of the NLC. Section 62(1) of the NLC reads:

> **Power of reservation of State land**
>
> (1) The State Authority may by notification in the Gazette reserve any State land for any public purpose.
>
> …

[14] Not relenting, to espouse its claim, the plaintiff has appealed against that decision pursuant to s. 418 of the NLC which reads as the following:

> **Appeals to the Court**
>
> (1) Any person or body aggrieved by any decision under this Act of the State Director, the Registrar or any Land Administrator may, **at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.**

A (2) Any such appeal shall be made in accordance with any written law for the time being in force relating to civil procedure; and the Court shall make such order thereon as it considers just.

(3) In this section, "decision" includes any act, omission, refusal, direction or order. (emphasis added)

B **[15]** Thus, this OS *vide* encl. 1 was filed against the defendant on 7 February 2022, which is within the stipulated period of three months from the date of communication of refusal by the defendant to rehear the petition *vide* letter dated 10 November 2021. The bases for the OS are:

C (i) Notice 6A for the impugned Lot 8914 is invalid, void and contrary to s. 97 of the NLC, following clear notification by the defendant to ignore it which was duly accepted by the plaintiff;

(ii) order to forfeit ownership of Lot 8914 is invalid and void following notification by the defendant to ignore Notice 6A of the NLC dated 3 March 2016 which was received and accepted by the plaintiff;

D (iii) reason to forfeit ownership of Lot 8914 following notification by defendant to ignore the said Notice 6A dated 3 March 2016 is invalid and contrary to ss. 97, 99 and 100 of the NLC and art. 13 of the Federal Constitution (FC);

E (iv) by issuing letters dated 7 March 2019 and 10 November 2021, the defendant has failed, refused and/or neglected to carry out its statutory responsibilities and powers following application by the plaintiff *via* petition under s. 133 of the NLC for the annulment of forfeiture of Lot 8914;

F (v) the defendant had considered irrelevant factors and failed to consider relevant factors when it issued the letter dated 10 November 2021;

(vi) refusal of the petition by plaintiff to annul the forfeiture of Lot 8914 is contrary to s. 133 of the NLC and art. 13 of the FC;

G (vii) reason given for refusal of the petition under s. 133 of the NLC and stipulating that the forfeiture was for public purpose and/or interest is wrong in law, as such a purpose could only be for purposes of land acquisition under the Land Acquisition Act 1960;

H (viii) the current document of title for the impugned land Lot 8914 was registered on 15 March 1996 but it was duly registered, and issuance of its document of title was only made on 26 December 2001. Further, a copy of the original document of title was not handed over to the plaintiff before issuance of Notice 6A; and

I (ix) therefore, return of ownership of Lot 8914 to the plaintiff is fair, equitable and appropriate in view of the above circumstances.

Non-compliance With ss. 97, 99 And 100 Of The NLC

[16] The salient provisions of the NLC applicable to the facts and circumstances of the case of the plaintiff, have been breached by the defendant, namely ss. 97, 99 and 100 of the NLC.

Section 97 of the NLC reads as:

> **Notice of demand**
>
> (1) Where any rent payable in respect of any alienated land is in arrear, the Land Administrator may cause to be served on the proprietor thereof a notice of demand in Form 6A.
>
> (2) A note of the service of any such notice shall be endorsed, by or at the instance of the Land Administrator, on the register document of title to the land to which the notice relates.

Section 99 reads as:

> **Effect of payment of sum demanded**
>
> If the whole of the sum demanded by any notice under section 97 is tendered to the Land Administrator within the time specified therein, the notice shall thereupon cease to have effect, and the Land Administrator shall cancel, or cause to be cancelled, the note endorsed pursuant to subsection (2) of that section on the register document of title to the land to which the notice related.

Section 100 reads as:

> **Forfeiture for non-payment of sum demanded**
>
> The Land Administrator shall not during the period specified in any notice under section 97 accept the tender by or on behalf of any person or body or a lesser amount than the sum thereby demanded; and if by the end of that period the whole of that sum has not been tendered to him, he shall thereupon by order declare the land forfeit to the State Authority, and the provisions of Part Eight shall have effect with respect thereto accordingly.

Thus, The Pivotal Issue Is, If The Order Of Forfeiture Of The Impugned Land At Lot 8914 Is Valid And If It Ought To Be Set Aside?

[17] The decision of our apex court in *Pow Hing & Anor v. Registrar Of Titles, Malacca* [1980] CLJU 120; [1980] 1 LNS 120; [1981] 1 MLJ 155, 158, serves as a binding precedent to resolve the issues raised by the plaintiff. It decides the following:

(i) forfeiture of land due to non-payment of quit rent must comply with the mandatory requirements under the NLC;

(ii) conforming with s. 97(2) of the NLC is mandatory. Non-compliance with that provision would vitiate any subsequent forfeiture effected because of failure by the registered proprietor to accede to the notice of demand made;

(iii) the mandatory requirements under the NLC are:

(a) service of a notice of demand in Form 6A (s. 97(1));

(b) a note or endorsement of service of Notice 6A on the register document of title (s. 97 (2));

(c) an order declaring the land forfeit to State Authority (s. 100);

(d) publication of the notification of forfeiture *vide* Form 8A in the Gazette (s. 130(1));

(e) publication of the notification of forfeiture in Form 8A in accordance with the provisions of s. 433 of the NLC (s. 130(2)) and

(f) registration of a memorial of the publication of copies of Form 8A on the register document of title (s. 130(2)).

(iv) an order previously made under s. 100 of the NLC is separate and distinct from the notification of forfeiture in Form 8A;

(v) Section 100 of the NLC stipulates that if by the end of the specified period the whole sum demanded as stipulated in the notice has not been tendered, the collector shall thereupon by order declare the land forfeit to the State Authority;

(vi) in this case, the collector had in his affidavit deposed that he did by order so declare on 21 June 1979, but the order exhibited is Form 8A which is a notification of forfeiture under s. 130(1) of the NLC for publication in the Gazette;

(vii) Section 130(1) of the NLC provides for such publication of the notification of forfeiture in Form 8A as soon as may be after making of an order under s. 100 of the NLC declaring that the land forfeit to the State Authority;

(viii) there should therefore be a separate order previously made under s. 100 of the NLC distinct from the notification of forfeiture in Form 8A to the NLC;

(ix) there is no form provided for an order under s. 100 of the NLC, but it was decided that the order can be either a simple order in terms of the provision, on default by the end of the specified period declaring the land forfeit to the State Authority or a minute to this effect in the relevant file;

(x) Section 134(1) of the NLC enacts that the validity of forfeiture shall not be challenged in any court except by means of or in proceedings consequent upon an appeal under s. 418 of the NLC against the order of the collector under s. 100 of the NLC;

(xi) Section 134(2) of the NLC provides that no order of the collector under s. 100 of the NLC shall be set aside by any court except upon the grounds of it having been made contrary to the provisions of the NLC or of there having been a failure on the part of the collector to comply with the requirements of such provision;

(xii) it then goes on to decide that no such order shall be set aside by reason only of any irregularity in the form or service of any notice under ss. 97 and 98 of the NLC unless, in the opinion of the court the irregularity was of a significant nature; and

(xiii) it is clear that s. 134(2) of the NLC specifically provides that irregularity in the form of service of a notice is not by itself a sufficient ground for setting aside the order of forfeiture unless the court considers it otherwise. It says nothing about and makes no exception with respect to the failure to make the endorsement under s. 97(2) which clearly comes within its opening provisions with regard to the grounds for setting aside an order of forfeiture as having been made contrary to the provisions of the NLC or of there having been a failure on the part of the collector to comply with the requirements of any such provision.

[18] Easing back to the facts of the present case, Notice 6A was not served on the plaintiff but United SEA Housing Ban Lee on 7 March 2016. (See: exh. ND 2 of encl. 4 and exh. ND9 of encl. 8). It was also served on Malayan Banking Berhad (MBB) on 30 March 2016, who is also not the plaintiff. (See: exh. ND4 of encl. 4). MBB had in turn served a letter on to the plaintiff without an acknowledgement of receipt, leaving the plaintiff with no knowledge of Notice 6A. In any event, Notice 6A shall be served by the defendant and not MBB, on the plaintiff as the registered proprietor of the impugned land at Lot 8914.

[19] Proper and adequate service of Notice 6A on the plaintiff being the registered proprietor is mandatory so as to give notice to the plaintiff that a forfeiture is imminent in the event of non-compliance with the said notice. (See again the case of *Pow Hing*). On compliance in respect of service of Notice 6A and with the other salient provisions of the NLC as alluded to above, His Lordship Abdoolcader J (as he then was) speaking for the Federal Court had said the following:

> *When Parliament lays down a statutory requirement for the exercise of legal authority it expects its authority to be obeyed down to the minutest detail. But what the courts have to decide in a particular case is the legal consequence of non-compliance on the rights of the subject viewed in the light of a concrete state of facts and a continuing chain of events.* It may be that what the courts are faced with is not so much a stark choice of alternatives but a spectrum of possibilities in which one compartment or description fades gradually into another. At one end of this spectrum there may be cases in which a fundamental obligation may

A have been so outrageously and flagrantly ignored or defied that the subject may safely ignore what has been done and treat it as having no legal consequences upon himself. In such a case if the defaulting authority seeks to rely on its action it may be that the subject is entitled to use the defect in procedure simply as a shield or defence without having taken any positive action of his own. At the other end of the spectrum the
B defect in procedure may be so nugatory or trivial that the authority can safely proceed without remedial action, confident that, if the subject is so misguided as to rely on the fault, the court will decline to listen to his complaint. (emphasis added)

In the present case, it is clear as crystal that with the non-compliance by the
C defendant of the mandatory provisions of the NLC, the legal consequence is that the plaintiff has lost its land Lot 8914. Through no fault of the plaintiff, it was told at the first instance that they could ignore Notice 6A issued as it was wrongly issued and there is no basis for demand to be made for the arrears of quit rent, simply because there was an intersection of two lots. The
D information did not come from any third party but the defendant itself *via* its technical division. Argument by the defendant that it is only proper for the defendant to have obtained information from the unit hasil and not the technical division, does not hold sway both logically and legally as whatever information received by the plaintiff is from the defendant, regardless of
E which division it comes from, as that would be a matter for the defendant to contend with and it is not the fault of the plaintiff to have relied on the information accorded by the technical division of the defendant.

Calculation Of The Outstanding Quit Rent

[20] The claim by the defendant was also for "tunggakan/fee/fee-fee"
F which is in contravention of ss. 97, 99 and 100 of the NLC. It does not come within the item of quit rent. As alluded to above, Lot 8914 was only registered on 26 December 2001, and the plaintiff has not received the grant for the said Lot, thus it had no knowledge of its existence. Pursuant to Notice 6A the annual rent for the said property is RM632 and the arrears payable
G for the past years are RM20,195. On calculation, it was for about 32 years, thus dating back to the year 1984, whereas the registration of Lot 8914 was only on 26 December 2001. Therefore, the amount stated in Notice 6A is incorrect, thus invalidly issued to the plaintiff. Support is sought from the decided case of *Lee Kwee Foh Sdn Bhd v. Pentadbir Tanah Daerah Batang*
H *Padang* [2019] 1 CLJ 141; [2018] MLJU 1583, where it was decided that the defendant ought to state the correct and accurate information pertaining to the land intended to be forfeited as well as the exact amount due, if otherwise, the order of the Land Administrator made under s. 100 of the NLC as well as the Notice 8A issued under s. 130 of the NLC is set aside.
I The wording of s. 97(1) is explicit, as it states "rent payable", which only means the exact amount payable by the plaintiff and not an approximate or an incorrect amount. It has to be definite.

No Order Declaring The Land Forfeit To The State Authority

[21] It is a requirement under the NLC that an order declaring the land forfeited to the State Authority must be made pursuant to s. 100 of the NLC. Support is had again from the Federal Court case of *Pow Hing* referred to above, which had decided that the order under s. 100 of the NLC can be either in the form of a simple order in terms of the provision on default by the end of the specified period declaring the land forfeit to the State Authority or a minute to the effect in the relevant file. But in the present case, no such proof or evidence was candidly tendered by the defendant. Once again, the right of the plaintiff to its own land is trampled by the defendant due to its wanton disregard to the mandatory provisions of the NLC, especially so on the service of Notice 6A and making of the order of forfeiture, and the service of it accordingly.

Notice 8A For Forfeiture Of Land Not Received By Plaintiff

[22] The plaintiff was informed by Yap Say Tee that the ownership of the impugned land Lot 8914 had been forfeited, but the notice of forfeiture in Form 8A dated 2 November 2016 was not served on the plaintiff. It is submitted that if the said notice was properly served on the plaintiff, it would have certainly highlighted the issue of overlapping of the lots to Yap Say Tee and the defendant before the said Form 8A was gazetted. It is iterated that Notice 6A is invalid and rightly disregarded by the plaintiff as the defendant had failed to comply with ss. 97, 99 and 100 of the NLC. The order of forfeiture made for impugned land Lot 8914 is also against s. 130 of the NLC and art. 13 of the FC, thus it shall be set aside for want of compliance not only with the salient provisions of the NLC which empowers the plaintiff with the rule of natural justice *vis* right to be heard but also the supreme law on the right of the plaintiff to its property in Lot 8914. It is so apparent that both the stimulant Notice 6A of the NLC, which later morphed into Form 8A of the NLC, were not properly and adequately served on to the plaintiff, when it is the registered proprietor of the said land.

Reliance On The Original Report By The Defendant

[23] As alluded to above, premised on the information received from the technical division of the defendant, it had issued an original report where it was decided and declared that there has been a mistake in issuing title to Lot 8914, thus the demand for arrears for quit rent was also a mistake. The defendant had also acknowledged making the two reports exhibited to the AIS of the plaintiff in encl. 2. The acknowledgment was by Ridzuan bin Kambali in his additional affidavit dated 1 April 2022 in encl. 5, wherein he had referred to two reports as laporan asal dan laporan terpinda yang ditandatangani oleh saya tersebut bertarikh 25 Julai 2014. Simultaneously, the defendant had also enclosed another report, which is the third report bearing the same date. Therefore, in sum total there are three contradictory reports. The third report RK3 is different from the original and amended report, in which a coloured sketch and handwriting was found.

[24] The plaintiff relies on the two reports, the original and amended report, as it comprises the initial reason offered by the defendant that no quit rent was paid for Lot 8914 and the action of forfeiture was undertaken without complying with the correct procedure under the NLC. The defendant too does not deny existence of the two reports; thus, it is not wrong for the plaintiff to rely on both to demonstrate to this court that the act and order of forfeiture made did not comply with the law.

[25] The third report was produced by the defendant to show that the action of forfeiture should be carried out by the defendant against Lot 8914, but it is riddled with confusion, on the characteristic of the said land, if it is for a road, parking lot or building. The documents referred to in that report are also incomplete and contradicting. There is no firm position taken by the defendant on its characteristic, rendering the action taken to forfeit the said land to be unclear. The plaintiff on the other hand, contends that Form 11A which was issued for Lot 8914 (see: exh. ND10 – DAIR 2 to encl. 8) shows clearly it was first issued on 12 November 1986 with the express condition "That the land herein described shall be used for building purpose only". With that, Lot 8914 is therefore for use for building only and not for a road.

[26] To reiterate, based on the original report, the technical division of the defendant had decided that there had been a mistake in issuing the title to Lot 8914 and the demand for arrears of quit rent was also a mistake. It was also informed to the plaintiff that Notice 6A was incorrectly issued and it could be ignored, which the plaintiff did. Thus, it is submitted by the plaintiff that the failure to pay the arrears of quit rent for Lot 8914 is plainly due to an error in the diagram drawn for Lot 8914 in the original report where it was shown that Lot 8914 overlaps with Lot 8383. Reliance by plaintiff is on that statement and representation made by technical division of the defendant, which is supported by document in the form of an original report which specifically refers to Lot 8914 being used as a parking lot but it was in fact a representation of Lot 8383.

[27] It is also submitted by the plaintiff that the original report is true and the shading of the diagram for Lot 8914 in that report was in fact relied on by the defendant to forfeit the said land. Moreover, based on the statement and representation by technical division of the defendant in respect of cancellation of Notice 6A due to the overlapping lots; non-payment of the purported arrears of quit rent for Lot 8914 is consequential. Abandonment of Notice 6A by the plaintiff is at the behest of the defendant *via* its technical division.

Issue Of *Res Judicata*

[28] It was firmly argued by the defendant that the facts and issues raised in this OS have been formerly decided by the Shah Alam High Court in Civil Case No. BA-24NCVC-722-05-2019. By way of retort, the plaintiff has contended that:

(i) the cause of action defined by the present OS, is premised on an appeal against decision made by the defendant which was communicated to the plaintiff *vide* letter dated 10 November 2021;

(ii) the crux of the appeal being that the defendant had failed to comply with ss. 97, 99 and 100 of the NLC when forfeiting the impugned land Lot 8914;

(iii) this OS is premised on the rejection of the petition by the plaintiff to have the order of forfeiture annulled pursuant to s. 133 of the NLC whilst emanating from the civil suit at Shah Alam High Court was for the decision by the defendant *vide* letter dated 7 March 2021 to be revoked and it was directed to rehear the petition by the plaintiff; and

(iv) this OS in encl. 1, is for all intents and purposes an appeal against the letter issued by the defendant dated 10 November 2021 which was communicated to the plaintiff. Thus, it is not an abuse of this court's process as it is filed for the sole purpose for the plaintiff to regain its ownership of Lot 8914, which was unlawfully forfeited.

When the judge of the High Court at Shah Alam ruled in the civil case for the defendant to rehear the petition advanced by the plaintiff, it also to mean to include the merits of it. That being, the mode and manner by which the order of forfeiture of the land Lot 8914 was made against the interest of the plaintiff, as the registered proprietor. Being so, logically rehearing the petition would also entail hearing of the issue in its entirety on the manner in which the order of forfeiture was made, and in the present case, not complying and side-stepping the mandatory provisions of the NLC which applies to the case of the plaintiff.

In A Nutshell

[29] At the outset, intention of the defendant was to forfeit the impugned land Lot 8914 and for it to be used as a road for public purpose. But the order of forfeiture was made unlawfully, as there has been noncompliance with the mandatory stipulations of the NLC. If the sole intention for forfeiture is for a public purpose, then the mode and manner of dealing shall be under the Land Acquisition Act 1960 which entails a separate and distinct set of procedure which would also favour the plaintiff, which includes – notification of the land acquisition to the public; entry and survey of the subject land in issue; marking of the subject land and notation of the acquisition on the Register; an enquiry conducted by the Land Administrator; an award by the Land Administrator and if necessary a reference to the High Court upon making of the award. In the present case, the defendant had adopted a wrong method when it had forfeited the land at Lot 8914 for a public purpose. It was also in clear contravention of art. 13(1) of the FC which reads:

> No person shall be deprived of property save in accordance with the law.

It is so because, at the risk of repetition, the defendant has not undertaken proper service of Notice 6A and Form 8A, which are mandatory stipulations under the NLC. The plaintiff is aggrieved by the decision of defendant, made pursuant to s. 100 of the NLC for the defendant to have forfeited the land Lot 8914 for non-payment of arrears of quit rent, when the demand made was declared by the defendant to be a mistake at the earliest instance.

The said forfeiture was also not in compliance with the provisions of the NLC, commencing from improper service of Notice 6A and Form 8A of the NLC and the incomplete nature of the order of forfeiture of Lot 8914 made under the NLC. Hence, the prayer by the plaintiff for the notification and Gazette for forfeiture of the said land to be set aside and for other incidental prayers in the OS *vide* encl. 1 is allowed with costs to be paid by the defendant.

[30] I had rendered brief grounds of judgment which were read out to parties on the date of decision, encapsulating the above in the following terms:

(i) the plaintiff had applied *vide* originating summons (OS) under s. 418 of the NLC for this court to declare that its land which was subject matter of an order of forfeiture be declared null and void. The prayer is also for the title of the said land to revert back to the plaintiff or alternatively for the defendant to issue a new title for the said land;

(ii) the order of forfeiture was made *vide* Form/Notice 6A of the NLC, pursuant to s. 97 of the NLC as the plaintiff did not pay the outstanding quit rent, amounting to a sum of RM101,323,20;

(iii) Section 97 of the NLC stipulates that the said notice must be served on to the plaintiff and endorsed on the land title;

(iv) in the present case, the said notice was allegedly served on the plaintiff personally, pursuant to s. 431 of the NLC, but on the endorsement to its title, service is stated to have been undertaken *vide* substituted service pursuant to s. 432 of the NLC;

(v) it is a fact that no title had been issued to the plaintiff and the alleged unpaid quit rent was for Lot No. 8914, registered in the name of plaintiff SEA Housing Corporation Limited as its owner since 22 October 1964;

(vi) ensuing from the fact that the title to the said land is in the name of the plaintiff, Form 6A was supposed to be issued to SEA Housing Corporation Limited at the address endorsed on the title, being at No. 37, Jalan Klyne, Wilayah Persekutuan, but instead the said Form 6A was addressed to Tingkat 14, Bangunan Lee Yan Lian, Jalan Tun Perak, Kuala Lumpur;

(vii) therefore, there had been irregularity in the service of Form 6A, as pin-pointed by the plaintiff. It was served on the wrong address, allegedly by way of personal service, but the endorsement denotes *vide* substituted service. It was served on the plaintiff on 7 March 2016, and proof of such service is found at exh. N29 to encl. 8;

(viii) another stark fact in the present case is that the affidavit evidence tendered by the plaintiff, shows that it only came to know that it owns Lot 8914 when it came to know of the issuance of Form 6A by word of mouth from the residents at the SEA Park Apartments nearby;

(ix) *circa* the month of April 2016, the plaintiff had checked with the defendant and it was unearthed that the title is in fact in their name. Before that date, the plaintiff was unaware of it;

(x) events had followed, whereby the plaintiff was informed by the defendant that since Form 6A was wrongly issued, it can be ignored. However, such representation was not in black and white. The plaintiff was also supplied with Laporan Penolong Pegawai Tanah (P7), indicating that Lot 8914 is actually Lot 8383, pursuant to which the plaintiff took the position to ignore Form 6A, as it pertains another lot of land and not that belonging to the plaintiff. It was only in the year 2018, the plaintiff had realised its land had been forfeited. Therefore, sequentially, after issuance of Form 6A, an order of forfeiture was made, pursuant to s. 100 of the NLC. The forfeiture notice was in Form 6A itself;

(xi) thrust of the argument by the plaintiff in order to support its OS are:

(a) Form 6A was improperly served on the plaintiff;

(b) there has been non-compliance with s. 433 of the NLC;

(c) it was admitted to by the defendant that the endorsement was wrongly made, by referring to s. 432 of the NLC, and stating it to be of no consequence;

(d) the declarant of the affidavit in encl. 38 did not attend personally before the Commissioner for Oaths to affirm the affidavit. This was confirmed by the Commissioner for Oaths himself;

(e) therefore, issuance of Form 6A and Form 8A of the NLC were invalid and the land belonging to the plaintiff was forfeited wrongly, and not in accordance with the law;

(f) with that, the plaintiff's right to property pursuant to art. 13 of the Federal Constitution (FC) had been infringed, since they were deprived of their property *via* an order of forfeiture made not according to law; and

(g) further, the entire episode has operated unjustly against the plaintiff, as the strip of land at Lot 8914 surround other pieces of land also owned by plaintiff, and because of the forfeiture, it has no access to the other pieces of land, thus Lot 8914 remained unmanaged.

(xii) thus, the plaintiff has turned to this court for an order for reversal of possession of the land back to the plaintiff. The application was made pursuant to s. 418 of the NLC with basis;

(xiii) perusing the affidavit evidence available, the following are apparent:

(h) a copy of the land title was never served on the plaintiff and it only came to discover of its existence after the issuance of Form 6A;

(i) therefore, the plaintiff was unaware of the existence of the said land. It had then obtained a certified true copy of its title from the land office;

(j) the plaintiff was told to ignore Form 6A as representation was made that the impugned land was in fact Lot 8383 and not Lot 8914, and that the title to Lot 8914 was wrongly issued;

(k) the plaintiff was fully aware of its land at Lot 8383, for which quit rent had been duly paid and there was no outstanding quit rent payable. It was not aware of Lot 8914;

(l) since the plaintiff was informed to ignore Form 6A issued, it is highly improper for the defendant to have pursued with the order of forfeiture of land Lot No. 8914;

(m) exhibit P9 was issued much later to inform that Lot 8914 and Lot 8383 are two different lots, as such there was a change in position by the defendant, but meanwhile they had proceeded with forfeiture of the impugned land; and

(n) pertinently, the report from the land office had existed and the person who had signed it had agreed that there was such a report and that the plaintiff is entitled to utilise the said report to its advantage.

(xiv) premised on the affidavit evidence proffered in the case, the balance of probabilities tilts in favour of the plaintiff and the defendant was unable to refute it. It is also clear that the defendant did not adhere to the strictures of procedure as provided for in the NLC before forfeiting Lot 8914 belonging to the plaintiff, on the ground that there was non-payment of quit rent. The forfeiture had taken place without proper and adequate notice to the plaintiff, as registered proprietor of the land, thus infringing art. 13 of the FC; and

(xv) in the upshot, prayer in the OS at encl. 1 by the plaintiff is allowed with costs.

[31] On the issue of costs, the counsel for plaintiff had prayed for an amount of RM20,000, citing serious getting up involved in the case. He had also informed the court that he had to research on the archives involved pertaining the case. On the other hand, the Senior Federal Counsel (SFC) appearing for the defendant had prayed for a nominal amount within the range of RM2,000 to RM5,000, as the application according to him is only an OS. Upon consideration and the fact that the plaintiff had endeavoured a great deal of research to mount this application before this court, an amount of RM13,000 is fair and reasonable, thus ordered as costs to be paid by the defendant to the plaintiff.

[32] This court had made a further order for the amount of quit rent to be paid or payable by the plaintiff to be reassessed by the defendant after considering the objection raised by plaintiff and with a breakdown as per tabulation in column 4 and 6 of Form 6A of the NLC. The reassessment is to be completed within two months from the date of this order. The quit rent is to be paid by the plaintiff to the defendant within four months from the date of this order.

[33] The delay in rendering this judgment is entirely mine but I have read out my brief grounds of judgment to parties as alluded to above, which also forms part of this judgment.